

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:23-cv-77-RJC-DCK**

JAMES JAYLORD WHITLEY,)
)
 Plaintiff,)
)
 vs.)
)
 NICHOLAS VENERABLE, et al.,)
)
 Defendants.)
 _____)

ORDER

THIS MATTER is before the Court *sua sponte*.

The *pro se* Plaintiff filed this civil action without paying the filing fee, and sought to proceed *in forma pauperis*. [Doc. 2]. On February 17, 2023, the Court denied the Plaintiff's Application to proceed *in forma pauperis* without prejudice to pay the filing fee or to file an Amended Application within 21 days. [Doc. 3]. The Plaintiff was cautioned that "[f]ailure to file an Amended Application within the time required or, if the Plaintiff chooses, to pay the filing fee, will result in the dismissal of this action without prejudice." [*Id.* at 2]. The Plaintiff has not paid the filing fee or filed an Amended Application to proceed *in forma pauperis* and the time to do so has expired.

The Plaintiff appears to have abandoned this action. Therefore, this action will be dismissed without prejudice. See Fed. R. Civ. P. 41(b) ("If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it."); Link v. Wabash R.R. Co., 370 U.S. 626, 630-33 (1962) (although Rule 41(b) does not expressly provide for *sua sponte* dismissal, Rule 41(b) does not imply any such restriction and a court has the inherent power to dismiss a case for lack of prosecution or violation of a court

order).

IT IS, THEREFORE, ORDERED that:

1. This action is **DISMISSED** without prejudice for failure to comply with the Court's February 17, 2023 Order.
2. The Clerk of Court is directed to close this case.

Signed: March 29, 2023

A handwritten signature in black ink, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.
United States District Judge

